

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

ELVIS SMITH,)
Petitioner,)
v.) No. 1:18-CV-220 RLW
JASON LEWIS,)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on state prisoner Elvis Smith's Motion for Leave to File a Reply to Respondent's Response (ECF No. 17), Motion for Appointment of Counsel (ECF No. 18), and Motion for Evidentiary Hearing (ECF No. 19), in his action pursuant to 28 U.S.C. § 2254.

Motion for Appointment of Counsel

There is no constitutional right to appointment of counsel in habeas corpus proceedings. See McClesky v. Zant, 499 U.S. 467, 494 (1991); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). The Court must, however, appoint counsel if there is to be an evidentiary hearing on the petition and may in its discretion appoint counsel when no evidentiary hearing is necessary. See Hoggard, 29 F.3d at 471 (citing Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994)). In exercising its discretion, the Court should consider among other things the legal complexity of the case, the factual complexity of the case, and the petitioner's ability to investigate and present his claims. See id. Where the issues involved can be properly resolved on the basis of the state court record, the Court does not abuse its discretion in denying a request for appointment of counsel. See id.

Petitioner's allegations appear to be appropriate for resolution on the state court record at this time. The allegations appear to be neither legally nor factually complex, and petitioner's pleadings are articulate and appropriate. Therefore, his motion for appointment of counsel will be denied without prejudice. Should an evidentiary hearing be necessary, the Court will appoint counsel for petitioner.

Other Motions

Petitioner's Motion for Leave to File a Reply will be granted. Petitioner may file a Reply memorandum by **August 28, 2020**.

Petitioner's Motion for Evidentiary Hearing will be denied without prejudice as the Court cannot determine at the present time that an evidentiary hearing is necessary.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Appointment of Counsel is **DENIED** without prejudice. [ECF No. 18]

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File a Reply is **GRANTED**. [ECF No. 17] Petitioner shall file his Reply by **August 28, 2020**.

IT IS FURTHER ORDERED that Petitioner's Motion for Evidentiary Hearing is **DENIED** without prejudice. [ECF No. 19]



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 28th day of July, 2020.